

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

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|---------------------------|---|---------------------|
| UNITED STATES OF AMERICA, |) | |
| |) | Case No. 4:06CR3075 |
| Plaintiff, |) | Case No. 4:05CR3017 |
| |) | |
| vs. |) | TENTATIVE |
| |) | FINDINGS |
| KENNETH J. SLOMINSKI, |) | |
| |) | |
| Defendant. |) | |

These cases will be consolidated for sentencing. I am in receipt of the presentence investigation report in this case. Except for the defendant's objections to the presentence report (filing 56 in 4:05CR 3017 and filing 63 in 4:06CR3075) and the motions for departure or variance (filing 57 in 4:05CR3017 and filing 62 in 4:06CR3075), there are no objections or motions for departure or variance. However, the government requests a lengthy evidentiary hearing. (Filing 55 in 4:05CR3017 and filing 61 in 4:06CR3075.)

IT IS ORDERED that:

(1) The undersigned will consult and follow the Guidelines to the extent permitted and required by United States v. Booker, 125 S. Ct. 738 (2005). In this regard, the undersigned gives notice that, unless otherwise ordered, he will (a) give the advisory Guidelines substantial weight; (b) resolve all factual disputes relevant to sentencing by the greater weight of the evidence and without the aid of a jury; (c) impose upon the government the burden of proof on all Guideline-enhancements; (d) impose upon the defendant the burden of proof on all Guideline-mitigators; (e) depart from the advisory Guidelines, if appropriate, using pre-Booker departure theory; and (f) in cases where a departure using pre-Booker departure theory is not warranted, deviate or vary from the Guidelines only when there is a plainly superior, principled reason which justifies a sentence different than that called for by application of the

advisory Guidelines.

(2) The Court makes the following rulings:

A. The defendant's motions for departure (filing 57 in 4:05CR3017 and filing 62 in 4:06CR 3075) based upon the spouse's medical condition, based upon the loss overstating the seriousness of the defendant's conduct, and based upon the defendant's rehabilitation are denied. Assuming for the sake of argument that the facts asserted by the defendant are true, I would not exercise my discretion to depart for any or all of these reasons, although I acknowledge my power to do so.

B. The defendant's motions (filing 57 in 4:05CR3017 and filing 62 in 4:06CR3075) requesting a variance from the Guidelines will be resolved at sentencing. (*See* ¶ 1(f) above.)

C. The defendant's objections to the presentence report (filing 56 in 4:05CR3017 and filing 63 in 4:06CR3075) (relating primarily to the amount of loss and relevant conduct) will be resolved at an evidentiary hearing. I will allocate 3 days to that hearing. Counsel shall jointly (together) contact my judicial assistant to schedule the hearing. Depending upon the outcome of the hearing, sentencing may, or may not, follow the evidentiary hearing.

(3) Except to the extent (if at all) that I have sustained an objection or granted a motion or reserved an issue for later resolution in the preceding paragraph, the parties are herewith notified that my tentative findings are that the presentence report is correct in all respects.

(4) If **any** party wishes to challenge these tentative findings, said party shall, as soon as possible, but in any event at least five (5) business days before sentencing, file in the court file and serve upon opposing counsel and the court a motion

challenging these tentative findings, supported by (a) such evidentiary materials as are required (giving due regard to the requirements of the local rules of practice respecting the submission of evidentiary materials), (b) a brief as to the law and (c) if an evidentiary hearing is requested, a statement describing why an evidentiary hearing is necessary and how long such a hearing would take.

(5) Absent submission of the information required by the preceding paragraph of this order, my tentative findings may become final and the presentence report may be adopted and relied upon by me without more.

(6) Unless otherwise ordered, any motion challenging these tentative findings shall be resolved at sentencing.

April 18, 2007.

BY THE COURT:

s/ Richard G. Kopf
United States District Judge